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SUPREME COURT OF THE UNITED STATES.

No. ~~206~~. 125.

JOHN G. INBUSCH AND JOHN D. INBUSCH, PLAINTIFFS IN ERROR,

vs.

CHARLES B. FARWELL.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF WISCONSIN.

Defendants

COVI. GIDEON, Printer, 511 Ninth Street, D. C.

Mayer in Error
original undertaking.
March 1 —

Clifford J

1882

SUPREME COURT OF THE UNITED STATES.
No. 206.

JOHN G. INBUSCH AND JOHN D. INBUSCH, PLAINTIFFS IN ERROR,

vs.

CHARLES B. FARWELL.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF WISCONSIN.

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DISTRICT COURT OF THE UNITED STATES OF AMERICA FOR THE DISTRICT OF WISCONSIN.

United States of America, } *ss.*
District of Wisconsin. }

At a special term of the District Court of the United States of America, for the District of Wisconsin, begun and held, according to law, at the city of Milwaukee, in said District of Wisconsin, on the second Monday (being the ninth day) of April, A. D. 1860. Present the Honorable Andrew G. Miller, Judge of said Court, presiding; John H. Lewis, Marshal; John M. Miller, Clerk.

Among other the following proceedings were had, to wit:

CHARLES B. FARWELL
vs.
JAMES BUCHANAN,
JOHN G. INBUSCH, and
JOHN D. INBUSCH.

Be it remembered, that heretofore, to wit, on the nineteenth day of October, A. D. 1859, came Charles B. Farwell, by his attorneys, Messrs. Finches, Lynde & Miller, and filed his præcipe for a summons against James Buchanan, John G. Inbusch, and John D. Inbusch, as follows:

Præcipe.

Charles B. Farwell
vs.
James Buchanan, John G. Inbusch, and John D. Inbusch.

U. S. District Court, Wisconsin.

The Clerk will issue summons in above entitled cause, returnable first Monday of November. Debt. Damages, $10,000.

FINCHES, LYNDE & MILLER,
Plffs' Att'ys.

Whereupon a summons issued as follows:

The United States of America, } *ss.*
District of Wisconsin. }

The President of the United States of America
To the Marshal of the District of Wisconsin, greeting:

You are hereby commanded to summon James Buchanan, John G. Inbusch, and John D. Inbusch to appear before the
[SEAL.] District Court of the United States of America, for the District of Wisconsin, aforesaid, at Milwaukee, on the

first Monday of November ensuing, then and there to answer unto Charles B. Farwell in a plea of debt, to his damage, ten thousand dollars, which shall then and there be made to appear. And of this writ make due return.

Witness the Hon. Andrew G. Miller, Judge of the said District Court of the United States, at the city of Milwaukee, in the said District of Wisconsin, this nineteenth day of October, in the year of our Lord one thousand eight hundred and fifty-nine, and of the independence of the United States the eighty-fourth.

J. M. MILLER, *Clerk.*

FINCHES, LYNDE, & MILLER, *Attorneys.*

Return.

And afterwards, and on or before the return day of said writ, came the said Marshal, and returned said writ, with his return endorsed thereon, as follows:

"The within named James Buchanan not found. Served on the within named John D. Inbusch and John G. Inbusch by delivering to each of them personally a copy of this summons, and showing them the original, this 22d day of October, A. D. 1859.

"M. J. THOMAS, *Marshal,*

"By WM. H. THOMAS, *Deputy.*"

And afterwards, to wit, on the seventh day of November, A. D. 1859, came the said plaintiff, by his said attorneys, and filed his declaration, as follows:

Declaration.

U. S. District Court, District of Wisconsin. } Of the first Monday of November, A. D. 1859.

District of Wisconsin, *ss.*

Charles B. Farwell, who is a citizen and resident of the State of Illinois, plaintiff in this suit, by Finches, Lynde & Miller, his attorneys, complains of James Buchanan who is not served with process, and John G. Inbusch and John D. Inbusch, who are citizens of the State of Wisconsin, and defendants in this suit, of a plea that they render unto said plaintiff the sum of six thousand five hundred dollars, which they owe to and unjustly detain from him, the said plaintiff.

For that, whereas, the said defendants, on the twenty-seventh day of February, A. D. 1858, at the District of Wisconsin aforesaid, by their certain writing, obligatory, sealed with their seals, and now shown here to the Court, the date whereof is the day and year aforesaid, acknowledged themselves to be jointly and severally held and firmly bound unto the said plaintiff in the sum of six thousand five hundred dollars above demanded, to be paid to the said plaintiff; yet the said defendants, although often

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requested so to do, hath not as yet paid the said sum of six thousand five hundred dollars above demanded, or any part thereof, to the said plaintiff, but hath hitherto wholly neglected and refused, and still neglects and refuses, so to do, to the damage of the plaintiff of ten thousand dollars, etc.

FINCHES, LYNDE & MILLER,
Att'ys for Plff.

And on the same day of filing the said declaration, to wit, on the 7th day (being the first Monday) of November, A. D. 1859, came the said plaintiff, by his said attorneys, and entered in the order and rule book a rule on the defendants to plead, as follows:

Rule to Plead.

Charles B. Farwell *vs.* James Buchanan, John G. Inbusch and John D. Inbusch.	Of the first Monday of November, A.D. 1859.

On motion of Finches, Lynde & Miller, plaintiff's attorneys, ordered that the defendants plead to the plaintiff's declaration on file by the first Monday of December next, or their default will be entered.

FINCHES, LYNDE & MILLER,
Plaintiff's Attorneys.

And afterwards, to wit, on the seventeenth day of November, 1859, came the defendants, John G. Inbusch and John D. Inbusch, by Mr. Lakin, their counsel, and crave oyer of the bond declared on, as follows:

Charles B. Farwell *agt.* James Buchanan, John G. Inbusch and John D. Inbusch.	The United States of America. District of Wisconsin. U. S. Dist. Court.

Oyer.

The defendants, John G. Inbusch and John D. Inbusch, demand oyer and copy of the writing obligatory mentioned in the declaration in this cause, and the condition thereof. Dated Nov. 17, 1859.

GEORGE W. LAKIN,
Att'y for John G. and John D. Inbusch.

To Messrs. Finches, Lynde & Miller,
Pl'ff's Att'ys.

And afterwards, to wit, on the fifth day of December, A. D. 1859, came the defendants, John G. Inbusch and John D. Inbusch, by their attorney, Mr. Lakin, and filed their pleas, as follows:

Plea.

Charles B. Farwell	The United States of America.
vs.	
James Buchanan, John G. Inbusch, and John D. Inbusch.	District of Wisconsin. U. S. Dist. Court.

And the said defendants, John G. Inbusch and John D. Inbusch, by George W. Lakin, their attorney, come and defend the wrong and injury, when, &c.; and crave oyer of the said supposed writing obligatory in the said declaration mentioned; and it is read to them, and they also crave oyer of the condition of the said supposed writing obligatory, and it is read to them; which said writing obligatory and the condition thereof are in these words:

"Know all men by these presents, that we, James Buchanan, as principal, (for and on behalf of himself, Henry Eastman, and Patten McMillen,) and John G. Inbusch and John D. Inbusch, who are residents and freeholders in the city of Milwaukee, county of Milwaukee, and State of Wisconsin, as sureties, are held and firmly bound unto Charles B. Farwell in the sum of six thousand five hundred dollars, lawful money of the United States, to the payment of which, well and truly to be made, we jointly and severally bind ourselves, our heirs, executors, and administrators. Sealed with our seals, dated this 27th day of February, A. D. 1858.

"Whereas, on the 12th day of February, A. D. 1858, a certain action was commenced in the District Court of the United States for the District of Wisconsin, wherein the said Charles B. Farwell is plaintiff, and the said James Buchanan, Henry Eastman, and Patten McMillen are defendants; and whereas, by virtue of the writ of attachment in said action, certain goods, chattels, and effects have been attached: Now, therefore, if the above named John G. Inbusch and John D. Inbusch, or either of them, will, on demand, pay to the plaintiff in said action the amount of the judgment that may be recovered against the defendants in this action, not exceeding the above named sum of six thousand five hundred dollars, then this obligation to be void; otherwise to be and remain in full force and effect.

"JAMES BUCHANAN, [SEAL.]
"JOHN G. INBUSCH, [SEAL.]
"JOHN D. INBUSCH, [SEAL.]

"Executed in presence of
"GEORGE W. LAKIN."

Which being read and heard, the said defendants, John G. Inbusch and John D. Inbusch, say, that the said supposed writing obligatory is not their deed, and of this they put themselves upon the country, &c.

By GEORGE W. LAKIN,
Their Attorney.

And for a further plea in this behalf, the said defendants, John G. Inbusch and John D. Inbusch, say, that the said plaintiff ought not to have or maintain his aforesaid action against them, because they say that heretofore, to wit, on the 12th day of February, A. D. 1858, the said Charles B. Farwell commenced a certain action of assumpsit in this Court against James Buchanan, (being one of the persons named as a defendant in this cause,) Henry Eastman, and Patten McMillen, which is the same action mentioned and set forth in the condition of said writing obligatory; and afterwards, to wit, on the 1st day of March, 1858, the said Charles B. Farwell filed his certain declaration in said action of assumpsit, wherein he alleged that he, the said Charles B. Farwell, the plaintiff named therein, was a citizen of the State of Illinois, and that James Buchanan, Henry Eastman, and Patten McMillen, the defendants named therein, were citizens of the State of Wisconsin; and that afterwards, to wit, on the 26th day of March, 1858, said defendants in said action of assumpsit, James Buchanan, Henry Eastman, and Patten McMillen, filed their certain plea therein, in substance and to the effect following, to wit:

"Charles B. Farwell	The United States of
vs.	America.
James Buchanan, Henry Eastman,	District of Wisconsin.
and Patten McMillen.	U. S. Dist. Court.

"And the said James Buchanan, Henry Eastman, and Patten McMillen, in their own persons come and say, that at the time of the commencement of the above suit; they were not, nor was either of them, citizens of the State of Wisconsin, nor have they or either of them at any time during five years last past been a citizen of said State of Wisconsin; but that said defendants at the time of the commencement of said suit were, and each of them was a citizen of the State of Illinois, and not of the State of Wisconsin, as is alleged in the plaintiff's declaration, and this the said defendants are ready to verify: Wherefore they pray judgment of the said writ and declaration, and that the same may be quashed, &c.

"HENRY EASTMAN,
"JAMES BUCHANAN,
"PATTEN McMILLEN.

"LAKIN & STEEVER,
"Defts' Att'ys."

Which said plea was duly verified; and that afterwards, to wit, on the 17th day of November, James Buchanan and Henry Eastman, two of the defendants in said action of assumpsit, by Lakin & Steever, their attorneys, in open court made and filed suggestion of the death of Patten McMillen, the other defendant therein, in substance and to the effect following, to wit:

"Charles B. Farwell *vs.* James Buchanan, Henry Eastman, and Patten McMillen.	The United States of America. District of Wisconsin. U. S. Dist. Court.

"And now comes the defendants, James Buchanan and Henry Eastman, by Lakin & Steever, their attorneys, and suggest to the Court that the defendant, Patten McMillen, since the commencement of this suit, has departed this life.

"Nov. 16, 1858.

"LAKIN & STEEVER,
"*Attys for Buchanan and Eastman.*"

And that afterwards, to wit, on the 10th day of January, 1859, the plaintiff in said action of assumpsit, by his counsel, filed his certain replication to said plea, in substance and to the effect following, to wit:

"Charles B. Farwell *vs.* James Buchanan, Henry Eastman, and Patten McMillen.	U. S. Dist. Court, Wis.

"And the said Charles B. Farwell saith, that his said writ and declaration, by reason of anything, by the said defendants in their said plea above alleged, ought not to be quashed, because he says, that at the time of the commencement of the above suit the said defendants, or one or more of them, were citizens of the State of Wisconsin and were not citizens of the State of Illinois, in manner and form as the said defendants have above in their said plea alleged; and this the said plaintiff prays may be enquired of by the country, &c.

"FINDE, LYNDE & WILLIAM,
"*Plaintiff's Attorneys.*"

And that afterwards, to wit, on the 8th day of April, 1859, on motion of the plaintiff in said action of assumpsit, an order was entered by the Court in substance and to the effect following, to wit:

"This day came the plaintiff by his counsel, and on his motion "it is ordered by the Court that this cause be and is hereby dis-"continued as to the defendants, James Buchanan and Henry "Eastman, they being citizens of the State of Illinois."

And the defendants aver, that the said Charles B. Farwell, the plaintiff in said action of assumpsit, did not recover and has not recovered judgment against James Buchanan, Henry Eastman and Patten McMillen, the defendants in said action, for any sum whatever, as in and by the record of said action now remaining in this Court will appear; and this the defendants, John G. Inbusch and John D. Inbusch, are ready to verify, wherefore they

pray judgment if the said plaintiff ought to have or maintain his aforesaid action thereof against them.

GEORGE W. LAKIN,
Att'y for Jno. G. and Jno. D. Inbusch.

I certify that, in my opinion, the above plea is well founded.
GEORGE W. LAKIN.

And afterwards, to wit, on the twenty-third day of December, A. D. 1859, came the said plaintiff, by his said attorneys, and filed his replication, as follows:

Replication.

Charles B. Farwell
vs.
James Buchanan, John G. Inbusch and John D. Insbusch
} U. S. Dist. Court, Wisconsin.

And the said plaintiff, as to the said plea of the defendants, John G. Inbusch and John D. Inbusch, by them first above pleaded and whereof they have put themselves upon the country, doth the like.

And the said plaintiff, as to the said plea of the said defendants, secondly above pleaded, saith, that the said plaintiff, by reason of anything by the said defendants in that behalf alleged, ought not to be barred from having and maintaining his aforesaid action thereof against the said defendants, John G. Inbusch and John D. Inbusch, because he saith, that heretofore, to wit, on the 12th day of January, A. D. 1858, he did commence a certain action of assumpsit in this Court against James Buchanan, Henry Eastman and Patten McMillen, and which is the same action mentioned and set forth in the condition of said writing obligatory, and that afterwards on the 1st day of March, 1858, the said Charles B. Farwell filed his certain declaration in said action of assumpsit, wherein he alleged that the said James Buchanan, Henry Eastman and Patten McMillen were co-partners in trade, doing business in the State of Wisconsin under the name, firm and style of Buchanan, Eastman & Co.; and that the said action was brought to recover the amount of two promissory notes then due and owing from the said Buchanan, Eastman & Co. to the plaintiff, and which said promissory notes are set forth in the said declaration, and are in the words following:

$2000. Chicago, Oct. 8, 1857.

Ninety days after date we, the subscribers of county of State of promise to pay to the bearer two thousand dollars, at the Galena Bank, with interest at 10 per cent. per annum from date, value received.

BUCHANAN, EASTMAN & CO,

$1000. Chicago, Oct. 8, 1837.

Four months after date we, the subscribers of county of State promise to pay to the bearer the sum of ten hundred dollars, at Galena Bank, Galena, Illinois, with interest at rate of 10 per cent. per annum, value received.

BUCHANAN, EASTMAN & CO.

And that also, heretofore, to wit, on the said 12th day of January, A. D. 1858, the said plaintiffs caused a writ of attachment to be issued out of and under the seal of said Court in said action of assumpsit, directed to the Marshal of the District of Wisconsin, wherein and whereby he was commanded to attach and safely keep all the property of the said James Buchanan, Henry Eastman and Patten McMillen within the District of Wisconsin, or so much thereof as would be sufficient to satisfy the demand of the plaintiff in said action of assumpsit. And the said Marshal returned the said writ of attachment with his return thereon, in substance, that he had attached certain property described in an inventory annexed thereto, and had served the said writ on said James Buchanan and Patten McMillen personally. And afterwards, to wit, on the said first day of March, 1858, the said defendants came into said Court and presented to the Court the said writing obligatory, described in the said declaration in this cause, and on motion it was ordered by the Court that the said attachment be discharged and the property attached be released to the said defendants, James Buchanan, Henry Eastman and Patten McMillen, and that the said property attached was afterwards, on the 6th day of March, 1858, released from the said attachment by the said Marshal.

And the defendants, in said action of assumpsit, did appear therein and file a plea; and the said James Buchanan and Henry Eastman did afterwards, on the 17th day of November, 1858, by their attorney, make and file a suggestion of the death of the defendant, Patten McMillen.

And the said plaintiff did, on the said 10th day of January, 1859, file his certain replication to said plea, and that afterwards, to wit, on the 8th day of April, 1859, the said Court did, on the motion of the said plaintiff, enter a discontinuance of said action as to James Buchanan and Henry Eastman. And that afterwards, to wit, on the 21st day of April, 1859, came into said Court Mark Bump, a citizen of the State of Wisconsin, administrator of the estate of Patten McMillen, deceased, and appeared as a party defendant in said action of assumpsit. And afterwards, to wit, at a term of said Court held in the city of Milwaukee on the third day of August, A. D. 1859, the said parties came, by their counsel, and on the appearance of Mark Bump, administrator of Patten McMillen, deceased, it was ordered by the Court that the said suit be revived against said administrator,

and the issue joined came on to be tried, and a jury was called to try the same. And the said jury found the said issue in favor of the said plaintiff.

And that afterwards, to wit, on the fifth day of September, 1859, it was ordered by said Court that, for want of a plea in bar of the plaintiff's action, it be referred to the clerk, to ascertain and report what sum the plaintiff ought to recover for his damages. And the said clerk reported in substance that he assessed the damages to the said plaintiff at the sum of three thousand three hundred and seventy-six dollars and forty cents; and thereupon a judgment was entered by said Court in favor of the plaintiff, against the estate of said Patten McMillen, for said sum with costs, and execution awarded to the plaintiff for said sum and costs. And this the said plaintiff is ready to verify, wherefore he prays judgment and his debt aforesaid, together with his damages by him sustained, on occasion of the detaining thereof, to be adjudged to him, &c.

FINCHES, LYNDE & MILLER.
Plaintiff's Attorneys.

And afterwards, to wit: on the second day of January, A. D. 1860, came the said defendants, John G. Inbusch and John D. Inbusch by their said attorney and filed their rejoinder as follows:

Rejoinder.

The United States of America, }
District of Wisconsin. }

James Buchanan, John G. Inbusch and John D. Inbusch
vs.
Charles B. Farwell. } Rejoinder.

And the said defendants, John G. Inbusch and John D. Imbusch as to the said replication of the said plaintiff to the second plea of the said defendants, saith that the said plaintiff ought not, by reason of anything by him in that replication alleged, to have or maintain his aforesaid action thereof against them, because they say that each and every matter and thing alleged and set forth in their said defendants' second plea, is true in substance and in fact; and that each and every matter and thing alleged and set forth in the replication of the plaintiff to said second plea, in any way inconsistent with, or in any manner traversing, denying or avoiding said second plea, or any part thereof, or any material averment therein contained, is not true.

And these defendants, John G. Inbusch and John D. Inbusch, aver that the said Charles B. Farwell, the plaintiff, mentioned and referred to in the action mentioned and described in the

condition of the said writing obligatory, did not in said action mentioned and described in the condition of said writing obligatory, and has not recovered judgment against James Buchanan, Henry Eastman and Patten McMillen, the defendants in said action, mentioned in the condition of said writing obligatory, for any sum whatever, and that there has been no forfeiture or breach of said writing obligatory or of the conditions thereof, on the part of the obligors therein named, or of either of them, as in, and by the records of said action now remaining in this Court, will appear, and of this the said John G. Inbusch and John D. Inbusch put themselves upon the country, &c.

By GEORGE W. LAKIN,
their Attorney.

And the plaintiff doth the like, &c.

FINCHES, LYNDE & MILLER,
Plaintiff's Attorneys.

And now at this same term, to wit., April Term, 1860, and on the eleventh day thereof, to wit., on the fourteenth day of May, A. D. 1860, the following proceedings were had, to wit:

Trial—Verdict.

Charles B. Farwell *vs.* James Buchanan, John G. Inbusch, and John D. Inbusch.	}	At Law.

This day came the plaintiff, by his counsel, and the defendants, John G. Inbusch and John D. Inbusch, by their counsel, and the issue herein came on to be tried. Whereupon a jury was called to try the same, who came, to wit., R. C. Hathaway, Hiram Merrill, Robert K. Carswell, Henry C. West, Sidney L. Rood, Mortimer L. Sayles, Joel H. Tracy, Charles A. Hastings, Joseph C. James, David S. Watson, Charles H. Hurd and Charles Brown, twelve free, honest and lawful men of the District, who were severally sworn and empanneled and charged by the Court. And the said jurors, of the Jury aforesaid, on their said oaths, respectively do say, that the bond declared on is the deed of the defendants, John G. Inbusch and John D. Inbusch, and that the same is forfeited. And they do further find the remaining issue in favor of the plaintiff. And they do find that the said defendants owe the plaintiff the sum of six thousand five hundred dollars, the penalty of said bond. And they do assess the damages to the plaintiff at three thousand eight hundred and twelve dollars and ninety-five cents. And came the said defendants, by their counsel, and filed their motion in arrest of judgment.

Which motion is as follows:

Motion in arrest of Judgment.

Charles B. Farwell *vs.* John G. Inbusch and John D. Inbusch.	The United States of America. District of Wisconsin.

And now came the defendants, by George W. Lakin, their attorney, and move in arrest of judgment herein. Because it is apparent upon the pleadings, and upon the whole record, that the plaintiff is not entitled to recover judgment against the defendants.

GEORGE W. LAKIN,
Defendants' Attorney.

And afterwards, to wit., on the seventeenth day of said term, to wit., on the twenty-second day of May, A. D. 1860, the following proceedings were had, to wit:

Motion overruled and Judgment.

Charles B. Farwell *vs.* James Buchanan, John G. Inbusch, and John D. Inbusch.	At Law.

This day the motion of the defendants in arrest of judgment, came on to be heard, and was submitted by counsel without argument. On consideration whereof, it is ordered by the Court, that the said motion be, and hereby is overruled.

And it is considered and adjudged by this Court, now here, that the plaintiff do have and recover of the defendants, John G. Inbusch and John D. Inbusch, six thousand five hundred dollars, the penalty of the bond declared on; and that he have execution for three thousand eight hundred and twelve dollars and ninety-five cents, the damages so as aforesaid assessed by the jury, together with thirty-six dollars and sixty-six cents, his costs about his said suit in this behalf, by him expended.

Judgment Roll signed May 22d, A. D. 1860.

Damage,	$3,812 95
Costs,	36 66
	$3,849 61

J. M. MILLER,
Clerk.

Judgment Roll filed May 22d, A. D. 1860, at 5 o'clock, P. M.
J. M. MILLER,
Clerk.

And afterwards, to wit., on the 24th day of May, A. D. 1860, Bill of Exceptions signed and filed, as follows:

Bill of Exceptions.

Charles B. Farwell *vs.* James Buchanan, John G. Inbusch, and John D. Inbusch.	The United States of America. District of Wisconsin. U. S. District Court.

And on the 14th day of May, A. D. 1860, at the same term of said Court, the said cause, and the several issues therein, came on to be tried. And the jury aforesaid, having been duly empanneled and sworn as aforesaid, the counsel for the plaintiff aforesaid, offered and read in evidence to the jury the original bond, and the condition thereof, a copy whereof is set forth in the defendants' first plea.

And the counsel also offered and read in evidence to the jury, the original record of the cause mentioned and referred to in the condition of the said bond, or writing obligatory, on which this suit is brought, which said record is in the words and figures following, to wit:

District Court of the United States of America, for the District of Wisconsin.

United States of America,
District of Wisconsin. } *ss.*

At a special term of the District Court of the United States of America, for the District of Wisconsin, begun and held, according to law, at the City of Milwaukee, in said District of Wisconsin, on the first Monday (being the fifth day) of September, A. D. 1859. Present the Honorable Andrew G. Miller, Judge of said Court, presiding.

MAJOR J. THOMAS,
Marshal.

JOHN M. MILLER,
Clerk.

Among other, the following proceedings were had, to wit:

Charles B. Farwell *vs.* James Buchanan, Henry Eastman, and Patten McMillen.	No. 67. July Term, 1858. Assumpsit.

Be it remembered, that heretofore, to wit., on the twelfth day of February, A. D. 1858, came the plaintiff, by his attorneys, Messrs. Finches, Lynde and Miller, and filed his præcipe, with an affidavit and bond for a summons, with attachment, as follows:

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Præcipe for Writ.

Charles B. Farwell
vs.
James Buchanan, Henry Eastman, and Patten McMillen. } U. S. D. C. Wisconsin.

Issue writ of attachment in above entitled cause, returnable first Monday of March. Assumpsit, Damages, $5000.

Yours, &c.,

FINCHES, LYNDE & MILLER,
Plaintiff's Attorneys.

Which said affidavit is as follows:

Affidavit for Attachment.

Charles B. Farwell
vs.
James Buchanan, Henry Eastman, and Patten McMillen. } U. S. District Court, District of Wisconsin.

District of Wisconsin, *ss.*

C. M. HAWLEY, being duly sworn, deposes and says that he is the agent of the plaintiff, Charles B. Farwell, and makes this affidavit for and on behalf of the said plaintiff, that a cause of action exists in him, the said plaintiff, against the said defendants, James Buchanan, Henry Eastman, and Patten McMillen, defendants, for the sum of three thousand dollars, and that the ground of said indebtedness is upon two promissory notes, one of which said notes is for $2000, dated Chicago, October 8th, 1857, payable to bearer, and signed by the defendants in their partnership name of Buchanan, Eastman & Co.; and one for $1000, dated October 8th, 1857, payable four months after date to bearer, and signed by said defendants in their firm name of Buchanan, Eastman & Co.; and which said notes are now owned and held by the said plaintiff.

And deponent further says, that the said defendants have fraudulently disposed of their property with intent to defraud their creditors, and further deponent saith not.

C. M. HAWLEY.

Subscribed and sworn before me this
12th day of February, A. D. 1858.

GEORGE A. WEEKS,
Notary Public, Mil. co., Wis.

Which said affidavit was endorsed as follows:

Let writ of attachment issue on the within affidavit on plaintiff's filing, bond, or undertaking. This day approved by me in this cause. February 12th, 1858.

J. LA DUE, *U. S. Com'r Dist. of Wis.*

Which said *bond* is as follows:

Know all Men by these Presents, that I, Charles B. Farwell, is held and firmly bound unto James Buchanan, Henry Eastman, and Patten McMillen in the sum of two hundred and fifty dollars, to be paid to the said James Buchanan, Henry Eastman, and Patten McMillen, their executors, administrators or assigns, to which payment well and truly to be made and done, I do bind myself, my heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with my seal the twelfth day of February, A. D. 1858.

Whereas, the said Charles B. Farwell hath applied for an attachment from the District Court of the United States for the Wisconsin District, of the goods and effects of James Buchanan, Henry Eastman, and Patten McMillen.

Now, therefore, the condition of this obligation is such that, if the said defendants recover judgment, the said plaintiff will pay all costs that may be awarded to the defendants, and all damages which they may sustain by reason of the attachment, not exceeding the aforesaid sum, then this obligation to be void, else valid.

CHARLES B. FARWELL, [SEAL.]
by C. M. HAWLEY, *his att'y in fact.*
JOHN S. HARRIS, [SEAL.]
LESTER SEATON. [SEAL.]

Witness,

District of Wisconsin, *ss.*

, being sworn, does say that he is worth the sum of dollars, exclusive of property exempt from execution, and his debts.

LESTER SEXTON.

Subscribed and sworn to before me
this day of A. D. 185 .

Which said bond is endorsed as follows:

I approve of the within bond in form and substance.

JOSHUA LA DUE,
U. S. Commissioner Dist. of Wis.

Feb. 12th, 1858.

Whereupon a writ issued as follows:

The United States of America, } *ss.*
District of Wisconsin. }

The President of the United States of America
To the Marshal of the District of Wisconsin, greeting:

You are hereby commanded to summon James Buchanan, [SEAL.] Henry Eastman, and Patten McMillen to appear before the District Court of the United States of America for the Dis-

trict of Wisconsin aforesaid, at Milwaukee, on the first Monday of March ensuing, then and there to answer unto Charles B. Farwell in a plea of trespass on the case on promises to his damage five thousand dollars, which shall then and there be made to appear.

And you are further hereby required and commanded to attach and safely keep all the property of the said James Buchanan, Henry Eastman, and Patten McMillen within your District, or so much thereof as may be sufficient to satisfy the demand of the said Charles B. Farwell, amounting to three thousand and one hundred dollars, together with costs and expenses: and of this writ make due return.

Witness, the Hon. Andrew G. Miller, Judge of the said District Court of the United States, at the city of Milwaukee, in the said District of Wisconsin, this twelfth day of February, in the year of our Lord one thousand eight hundred and fifty-eight and of the Independence of the United States the eighty-second.

J. M. MILLER, *Clerk.*

FINCHES, LYNDE & MILLER, *Attorneys.*

And afterwards, on or before the return day of said writ, came the said Marshal, and returned said writ, with his return endorsed thereon as follows:

Return to Writ.

"By virtue of this writ, and by direction of the plaintiff's attorneys, I attached the property, described in the inventory hereto annexed, on the 16th day of February, 1858, and caused the same to be appraised by two disinterested freeholders of Jackson county, who were first by me duly sworn to make a true appraisement thereof, which inventory and appraisal are herewith returned, and I served this writ on James Buchanan and Patten McMillen, by showing them this writ and giving each a copy thereof, together with a copy of the inventory of the property attached, this 16th day of February, 1858.

"M. J. THOMAS, *Marshal,*
"*by* M. F. HUBBARD, *Deputy.*"

Which said inventory and appraisal referred to in the return of the said Marshal are as follows:

Inventory and Appraisal.

Charles B. Farwell *vs.* James Buchanan, Henry Eastman, and Patten McMillen.	District Court of the United States for the District of Wisconsin.

Inventory of personal property, attached by virtue of the annexed writ of attachment in the above-entitled cause, on this

16th day of February, A. D. 1858, to wit:—120 cribs of pine lumber, composed of fencing, flooring, and common boards, now lying at Black River, at the village of Black River Falls, each of said cribs containing, as near as can be ascertained, 3,000 feet, making in the aggregate 360,000 feet—said attachment made at 7½ o'clock A. M. of said day; also, 200,000 feet of pine lumber, laying at the mills of the said defendant on said river, eight miles above said village of Black River Falls, composed of fencing, flooring, and common boards; also, 40,000 pine shingles, at said mills—made at the hour of 9½ o'clock A. M. of said day. All of said property being in the county of Jackson, in said State of Wisconsin. Also, 300,000 feet of pine lumber in the log, lying at the said mills.

James Darrow and Isaac S. Mason, two disinterested freeholders, of the county of Jackson, being first duly sworn by M. F. Hubbard, Deputy U. S. Marshal for the District of Wisconsin, to make a true appraisement of the property described in the foregoing inventory, do appraise the same at the prices affixed thereto respectively, amounting in the aggregate to the sum of six thousand four hundred and fifty dollars, as follows, to wit:

For fencing, flooring, and common boards, at seven dollars and fifty cents per thousand feet.

For the logs, in the yard, at four dollars per thousand feet.

For the said shingles, at two dollars per thousand feet.

ISAAC S. MASON,
JAMES DARROW,
Appraisers.

Subscribed and sworn to before me this 16th day of February, A. D. 1858.

M. F. HUBBARD, *Deputy Marshal.*

And afterwards, to wit: on the first day of March, A. D. 1858, came the said plaintiff, by his said attorneys, and filed his declaration, as follows:

Declaration.

District Court of the United States, for the District of Wisconsin,
Of the first Monday of March, A. D. 1858.

District of Wisconsin, *ss.*

Charles B. Farwell, who is a citizen of the State of Illinois, plaintiff in this suit, by Finches, Lynde and Miller, his attorneys, complains of James Buchanan, Henry Eastman and Patten McMillen, citizens of the State of Wisconsin, and who were, at the time of the making of the promises hereinafter set forth, co-partners in trade, doing business in the city of La Crosse, under the firm

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name and style of Buchanan, Eastman & Co., defendants in this suit, of a plea of trespass on the case on promises.

For that, whereas, the said defendants, on the eleventh day of February, in the year one thousand eight hundred and fifty-eight, at the District of Wisconsin aforesaid, was indebted to the said plaintiff in the sum of five thousand dollars, lawful money of the United States of America, for the work and labor, care and diligence of the said plaintiff by the said plaintiff before that time done, performed and bestowed, in and about the business of the said defendants, and for the said defendants, and at the special instance and request of the said defendants, and also for divers materials and other necessary things by the said plaintiff found, provided, used and applied, in and about that work, at the special instance and request of the said defendants, and being so indebted to the said plaintiff, the said defendants, in consideration thereof, afterwards, to wit: on the same day and year, and at the place aforesaid, undertook, and then and there faithfully promised the said plaintiff well and truly to pay unto the said plaintiff the sum of money last mentioned, when the said defendants should be thereunto afterwards requested. And whereas, also, the said defendants afterwards, to wit: on the same day and year, and at the place aforesaid, in consideration that the said plaintiff had, before that time, at the like special instance and request of the said defendants, done, performed and bestowed divers other work and labor, care and diligence, in and about the business of the said defendants, and for the said defendants, and had before that time found, provided, used and applied divers other materials and other necessary things, in and about that business, the said defendants then and there undertook and faithfully promised the said plaintiff that the said defendants would well and truly pay the said plaintiff so much money as the said plaintiff reasonably deserved to have of the said defendants for the same, when the said defendants should be thereunto afterwards requested; and the said plaintiff avers that the said plaintiff therefore reasonably deserves to have of the said defendants for the same the further sum of five thousand dollars, of like lawful money as aforesaid, to wit: at the place aforesaid, whereof the said defendants afterwards, to wit: on the same day and year, and at the place aforesaid, had notice. And whereas, also, the said defendants afterwards, to wit: on the same day and year, and at the place aforesaid, were indebted to the said plaintiff in the sum of five thousand dollars, of like lawful money as aforesaid, for divers goods, wares and merchandise, by the said plaintiff before that time sold and delivered to the said defendants, and at the like request of the said defendants; and in the further sum of five thousand dollars of lawful money as aforesaid, for so much money before that time lent and advanced by the said plaintiff to the said defendants, and at the like request of the said defendants; and for other money

by the said plaintiff before that time paid, laid out and expended for the said defendants, and at the request of the said defendants; and for other money by the said defendants before that time had and received to and for the use of the said plaintiff; and being so indebted, the said defendants, in consideration thereof, afterwards, to wit: on the same day and year, and at the place aforesaid, undertook, and then and there faithfully promised the said plaintiff well and truly to pay unto the said plaintiff the said several sums in this count mentioned, when the said defendants should be thereunto afterwards requested. And whereas, also, the said defendants afterwards, to wit: on the same day and year, and at the place aforesaid, accounted together with the said plaintiff of and concerning divers other sums of money before that time due and owing from the said defendants to the said plaintiff, and then and there being in arrear and unpaid, and upon such accounting the said defendants, then and there found to be in arrear and indebted to the said plaintiff in the further sum of five thousand dollars of like lawful money, as aforesaid; and being so found in arrear and indebted to the said plaintiff, the said defendants, in consideration thereof, afterwards, to wit: on the same day and year, and at the place aforesaid, undertook, and then and there faithfully promised the said plaintiff well and truly to pay unto the said plaintiff the said sum of money last mentioned, when the said defendants should be thereunto afterwards requested.

Nevertheless, the said defendants, although often requested, &c., have not yet paid the several sums of money above mentioned, or any or either of them, or any part thereof, to the said plaintiff, but to pay the same or any part thereof to the said plaintiff, the said defendants have hitherto altogether refused, and still do refuse, to the damage of the said plaintiff of five thousand dollars, and therefore the said plaintiff brings suit, &c.

FINCHES, LYNDE & MILLER,
Plaintiff's Attorneys.

To the defendant within named:

Take notice that the following are copies of two promissory notes, which will be offered in evidence on the trial of this cause.

$2,000. Chicago, Oct. 8, 1857.

Ninety days after date we, the subscribers, of County, State of , promise to pay to the bearer two thousand dollars, at the Galena Bank, with interest, at ten per cent. per annum, from date; value received.

(Signed.) BUCHANAN, EASTMAN & CO.

$1,000. Chicago, Oct. 8, 1857.

Four months after date, we, the subscribers, of County, State of , promise to pay to the bearer one thousand

dollars, at Galena Bank, Galena, Ill., with interest, at rate of ten per cent. per annum: value received.

(Signed.) BUCHANAN, EASTMAN & CO.

Yours, &c., FINCHES, LYNDE & MILLER.
Plaintiff's Attorneys.

And same day (March 1st, A. D. 1858,), came the said plaintiff, by his said attorneys, and entered in the order and rule book *a rule on the defendants to plead,* as follows:

Rule to Plead.

Charles B. Farwell *vs.* James Buchanan, Henry Eastman and Patten McMillen.	Of the first Monday of March, A. D. 1858.

On motion of Finches, Lynde and Miller, plaintiff's attorneys, ordered that the defendants plead to the plaintiff's declaration on file, by the first Monday of April next, or their default will be entered.

FINCHES, LYNDE & MILLER,
Plaintiff's Attorneys.

And same day, March 1st, 1858, and at a Term of said Court, the following proceedings were had, to wit:

Order of Court.

Charles B. Farwell *vs.* James Buchanan, Henry Eastman and Patten McMillen.	At Law.

This day came the defendants, by Messrs. Lakin and Steever, and on filing a bond, with sureties, conditioned to pay the amount recorded, it is ordered by the Court that the attachment be discharged, and the property attached to be released.

(Certified copy of Order delivered to the Marshal; which said Bond is as follows:)

Bond.

Know all men, by these presents, that we, James Buchanan, as principal (for and on behalf of himself, Henry Eastman and Patten McMillen), and John G. Inbusch and John D. Inbusch, who are residents and freeholders in the City of Milwaukee, County of Milwaukee, and State of Wisconsin, as sureties, are held and firmly bound unto Charles B. Farwell, in the sum of six thousand five hundred dollars, lawful money of the United States, to the

payment of which, well and truly to be made, we jointly and severally bind ourselves, our heirs, executors and administrators. Sealed with our seals, dated this 27th day of February, A. D. 1858.

Whereas. on the 12th day of February, A. D. 1858, a certain action was commenced in the District Court of the United States for the District of Wisconsin, wherein the said Charles B. Farwell is plaintiff, and the said James Buchanan, Henry Eastman and Patten McMillen are defendants, and whereas, by virtue of the writ of attachment in said action, certain goods, chattels and effects have been attached: Now, therefore, if the above named John G. Inbusch and John D. Inbusch, or either of them, will, on demand, pay to the plaintiff in said action the amount of the judgment that may be recovered against the defendants in the action, not exceeding the above-named sum of six thousand five hundred dollars, then this obligation to be void, otherwise to be and remain in full force and effect.

JAMES BUCHANAN, [SEAL.]
JOHN G. INBUSCH, [SEAL.]
JOHN D. INBUSCH. [SEAL.]

Executed in presence of
GEORGE W. LAKIN.

The United States of America,
District of Wisconsin. } *ss.*

John G. Inbusch and John D. Inbusch, the persons named in the foregoing bond, being severally sworn, does each for himself, say that he is a resident and freeholder in the State of Wisconsin, and that he is worth the sum of six thousand five hundred dollars, over and above all debts, legal liabilities and property exempt from execution.

JOHN G. INBUSCH,
JOHN D. INBUSCH.

Subscribed and sworn to, this 27th day of February, A. D. 1858, before me,
FRANK B. VAN VALKENBURGH,
Notary Public, Milwaukee Co., Wis.

And afterwards, to wit: on the 10th day of March, A. D. 1858, the said Marshal returned said Order of Court, with his return endorsed thereon, as follows:

Return of Marshal on Order of Court.

"The property in this case released, by virtue of the within order, this 6th day of March, 1858, served on the within named James Buchanan and Patten McMillen, by showing them this Order of

Court, and delivering to each a copy thereof, this 6th day of March, A. D. 1858.

M. J. THOMAS,
Marshal.
By M. F. HUBBARD,
Deputy.

Fees, $20.20.

And afterwards, to wit, on the twenty-fourth day of March, A. D. 1858, came the said defendants by their attorneys, and filed their plea, as follows:

Plea.

Charles B. Farwell
vs.
James Buchanan, Henry Eastman, and Patten McMillen.

The United States of America.
District of Wisconsin.
U. S. Dist. Court.

And the said James Buchanan, Henry Eastman and Patten McMillen, in their own persons come and say, that at the time of the commencement of the above suit, they were not, nor was either of them citizens of the State of Wisconsin, nor have they or either of them, at any time during five years last past been a citizen of said State of Wisconsin, but that said defendants at the time of the commencement of said suit, were and each of them was, a citizen of the State of Illinois, and not of the State of Wisconsin, as is alleged in the plaintiff's declaration, and this the said defendants are ready to verify; wherefore, they pray judgment, and the said writ and declaration, and that the same may be quashed, &c.

HENRY EASTMAN,
JAMES BUCHANAN,
PATTEN McMILLEN.

LAKEN & STEEVER,
Defendants' Attorneys.

Henry Eastman, one of the defendants in the cause above-named, being duly sworn, maketh oath and saith, that the above and foregoing plea, and the several matters and things therein set forth, are true in substance and in fact.

HENRY EASTMAN.

Subscribed and sworn to this 11th day of March, A. D. 1858, before me,

WM. C. BOSTWICK,
U. S. Commissioner Circuit Court, U. S. Dist. Ill.

And the following entries appear of record in the said cause:

Appearance Docket, Entries, &c.

March 29, 1858.—This day came the defendants, by their attorneys, and entered a rule for a commission to be directed to Benjamin Coombs, of Galena, Jo Daviess County, and State of Illinois, to take the depositions of H. B. McGinness, George Filer, Philip Byrne, Patrick McCarty, Nadab Eastman and Gutlip Markle, all of the same place, and also filed interrogatories.

April 10, 1858.—This day commission issued to Benjamin Coombs, of Galena, Jo Daviess County, and State of Illinois, to take the depositions of H. B. McGinness, George Filer, Philip Byrne, Patrick McCarty, Nadab Eastman, and Gutlip Markle, all of the same place.

April 19, 1858.—Depositions received from Post Office and filed.

June 4, 1858.—This day came the plaintiff, by his attorneys, and entered a rule for a commission to issue to C. R. Johnson, Esq., of the Village of Black River Falls, Wis, to take the depositions of W. T. Price, and also filed interrogatories to be annexed to said commission. And also, same day, entered a rule for a commission to issue to Myron G. Parsons, Esq., of the City of Chicago, Illinois, to take the depositions of Cyrus M. Hawley, and Joseph C. Tiffany, and also filed interrogatories to be annexed to said commission.

June 5, 1858.—This day came the plaintiff, by his attorney, and entered a rule for a commission to issue to Henry E. Prichett, Esq,, of the Village of Black River Falls, Wisconsin, to take the depositions of Aaron Clinton, C. R. Johnson, D. C. Whipple, Erastus L. Sheldon, and John H. Clapp; and also filed interrogatories to be annexed to said commission.

June 12, 1858.—This day came the defendants, by their attorneys, and filed cross-interrogatories to be annexed to the commission to be issued in this cause, and named as commissioners George F. Haswell, of Black River Falls and John M. Jewett, of Chicago, Illinois.

June 16, 1858.—Commission issued.

June 24, 1858—Depositions received from Post-Office and filed.

July 8, 1858.—Depositions received from Post-Office and filed.

August 17, 1858.—This day came the plaintiff, by his attorneys, and entered in the Order and Rule Book, a rule for a commission to issue to C. R. Johnson, Esq., of the Village of Black River Falls, to take the deposition of John Hague; and also filed interrogatories to be annexed to said commission.

August 21, 1858.—Depositions received from Post-Office and filed.

August 28, 1858.—Commission issued.

September 7, 1858.—Depositions received from Post-Office and filed.

October 8, 1858.—This day came the defendants, by their attorneys, and entered a rule for a commission to issue to Benjamin Coombs, Esq, of the City of Galena, Jo Daviess County, Illinois, to take the depositions of Alexander J. Jackson, Richard Jackson, Gotleib Merkle, George McCully, George Melville, S. S. Loraine, John Perkins and Walter Ford, and filed interrogatories to be annexed to said commission; and also same day entered a rule for a commission to issue to Carl C. Pope, Esq., of Black River Falls, Jackson County, Wisconsin, to take the depositions of John Lewis, ——— Baker, W. L. W. Wasson, George F. Haswell, Thomas Patterson and J. R. Crosett; and filed interrogatories to be annexed to said commission.

October 18, 1858.—This day came the plaintiff, by his attorneys, and filed cross-interrogatories to be annexed to the commission to issue to Benjamin Coombs, Esq., and names William C. Bostwick, as commissioner; and same day filed cross-intergatories to be annexed to the commission to issue to Carl C. Pope, Esq., and named C. R. Johnson, as commissioner.

October 21, 1858.—Commission issued.

October 25, 1858.—This day came the plaintiff, by his attorney, and entered a rule for a commission to be directed to J. R. Johnson, Esq., of Black River Falls, to take the deposition of Hugh Wedge; and also a commission to William R. Rowley, Esq., to take the depositions of James L. Johnson, Horatio Nelson, Simeon K. Miner, Matthew Marvin, and Horace N. Houghton; and same day filed interrogatories to be annexed to said commissions.

October 30, 1858.—Depositions received from Post-Office and filed.

October 29, 1858.—This day came the defendants, by their attorneys, and filed cross-interrogatories to be annexed to the commission to be directed to J. R. Johnson, Esq., to take the deposition of Hugh Wedge, and named as commissioner Carl C. Pope, Esq., on their part; and same day filed cross-interrogatories to be annexed to the commission to be directed to William R. Rowley, Esq., to take the depositions of James L. Johnson, Horatio Nelson, Simeon K. Miner, Matthew Marvin and Horace N. Houghton, and named Benjamin Coombs, Esq., as Commissioner on their part.

November 3, 1858.—Commission issued to J. R. Johnson and Carl C. Pope, and William R. Rowley and Benjamin Coombs.

Suggestion of death of McMillen.

November 17, 1858.—This day came Messrs. Lakin & Steever, defendants' counsel, and made suggestion of the death of Patten McMillen.

November 19, 1858.—Depositions received from Post-Office and filed.

And afterwards, to wit, on the tenth day of January, A. D. 1859, came the said plaintiff by his attorneys, and filed his replication, as follows:

Replication.

Charles B. Farwell
vs.
James Buchanan, Henry Eastman and Patten McMillen. } U. S. Dist. Court, Wis.

And the said Charles B. Farwell saith, that his said writ and declaration, by reason of anything by the said defendants in their said plea above alleged ought not to be quashed, because he says, that at the time of the commencement of the above suit, the said defendants, or one or more of them, were citizens of the State of Wisconsin, and were not citizens of the State of Illinois, in manner and form as the said defendants have above in their said plea alleged, and that the said plaintiff prays may be enquired of by the country, &c.

FINCHES, LYNDE & MILLER,
Plaintiff's Attorneys.

And afterwards, to wit, on the fourth day of April, A. D. 1859, came Mark Bump, administrator of Patten McMillen, deceased, and filed his *appearance*, as follows:

Appearance of Mark Bump, &c.

Charles B. Farwell
vs.
James Buchanan, Henry Eastman, and Patten McMillen. } U. S. District Court, Wisconsin.

The Clerk will enter my appearance in the above entitled cause.

March 29, 1859. M. BUMP,
Administrator of the Estate of Patten McMillen, deceased.

And afterwards, to wit, on the eighth day of April, A. D. 1859, and at a term of said Court, the following proceedings were had, to wit:

Discontinuance as to Buchanan and Eastman.

Charles B. Farwell
vs.
James Buchanan, Henry Eastman, and Patten McMillen. } At Law.

This day came the plaintiff by his counsel, and on his motion,

it is ordered by the Court, that this cause be and is hereby discontinued as to the defendants, James Buchanan and Henry Eastman, they being citizens of the State of Illinois.

And afterwards, to wit, on the 21st day of April, 1859, and at a term of said Court, the following proceedings were had, to wit:

Appearance of Bump.

Charles B. Farwell
vs.
Patten McMillen. } At Law.

This day came Mark Bump, a citizen of the State of Wisconsin, administrator of the estate of Patten McMillen, deceased, and appeared as a party defendant in this cause.

And afterwards, to wit, on the third day of August, A. D. 1859, and at a term of said Court, the following proceedings were had, to wit:

Charles B. Farwell
vs.
Mark Bump, administrator of
Patten McMillen, deceased. } At Law.

Cause revived.

This day came the parties, by their counsel, and on the appearance of Mark Bump, administrator of Patten McMillen, deceased, it is ordered by the Court, that this cause be and hereby is revived against said administrator.

Trial.

The issue herein came on to be tried. Whereupon a jury was called to try the same between the plaintiff and Mark Bump, administrator of Patten McMillen, deceased, by consent, who came, to wit, Elisha Starr, Horatio Hill, Francis Devlin, Timothy O'Brien, George L. Granberry, James B. Kellogg, James S. Buck, Robert Whitehead, Henry Bingham, James A. Littlefield, John A. Seger, and James P. Thompson, twelve free honest and lawful men of the District, who were severally sworn and empanneled, and the trial not being concluded, the same was adjourned until to-morrow morning.

And afterwards, on the fourth day of August, A. D. 1859, and at the same term of said Court the following proceedings were had, to wit:

Trial continued.

Charles B. Farwell
vs.
Mark Bump, administrator of
Patten McMillen, deceased. } At Law.

This day came the parties, by their counsel, and the trial of the issue herein, between the plaintiffs and Mark Bump, administrator of Patten McMillen, deceased, was resumed.

Verdict.

And the said jurors, of the jury aforesaid, being charged by the Court, upon their said oaths, respectively, do say, that they find the issue herein, in favor of the plaintiff. And came Mr. Lakin, the attorney for the parties in interest, and on their behalf moves in arrest of judgment, for reasons filed, as follows:

Motion in arrest of Judgment.

Charles B. Farwell
vs.
Mark Bump, administrator of
Patten McMillen, deceased, } The United States of America.
District of Wisconsin.
U. S. District Court.

And now comes George W. Lakin, attorney for parties in interest, and on their behalf moves an arrest of judgment in this cause. Because upon the pleadings, and all of the proceedings in the action, it is apparent that the plaintiff is not entitled to judgment in his favor or against the defendant.

GEORGE W. LAKIN,
Att'y for parties in interest.

And now at this same term, to wit, September Special Term, A. D. 1859, and on the first day of said Term, to wit, on the fifth day of September, A. D. 1859, the following proceedings were had, to wit:

Charles B. Farwell
vs.
Mark Bump, administrator, &c. } At Law.

This day came the parties, by their counsel, and the motion in arrest of judgment having been submitted without argument. On consideration whereof, it is ordered by the Court, that the said motion be, and hereby is overruled. And on motion of the plaintiff by his counsel, it is ordered by the Court, that for want of a plea in bar of the plaintiff's action, it be referred to the clerk to ascertain and report what sum the plaintiff ought to recover for his damages.

The clerk reported in writing that he assessed the damages to

the said plaintiff at the sum of three thousand, three hundred and seventy-six dollars and forty cents, as follows:

District Court of the United States of America, for the District of Wisconsin.

Charles B. Farwell
vs.
Mark Bump, administrator of the estate of Patten McMillen, deceased. } No. 67. July Term, 1858.

I, John M. Miller, Clerk of the District Court of the United States of America, for the District of Wisconsin, do hereby report, that in pursuance of an order of this Court referring to me to ascertain and report the amount due the plaintiff, I have assessed the damages to the plaintiff at the sum of three thousand three hundred and seventy-six dollars, and forty cents.

Damages, $3,376.40.

J. M. MILLER, *Clerk.*

Dated.—Sept. 5th, 1859.

Judgment.

Whereupon it is considered and adjudged by this Court, now here, that the said plaintiff do have and recover of the estate of Patten McMillen, deceased, the said sum of three thousand three hundred and seventy-six dollars and forty cents, with two hundred and seventy-two dollars and forty-five cents, his costs about his said suit in this behalf by him expended, and that he have execution therefor.

Judgment roll signed, September 5th, A. D. 1859.

J. M. MILLER, *Clerk.*

Damages	$3,376.40
Costs	272.45
	$3,648.85

Judgment roll filed September 5th, 1859, at five o'clock, P. M.

J. M. MILLER, *Clerk.*

And the plaintiff had a witness sworn, by whom it was proved that before this suit was brought, he the plaintiff caused demand to be made of the defendants, John G. and John D. Inbusch, of the amount claimed by the plaintiff and that the said defendants in substance, refused payment.

Here the testimony closed, and the above was all of the testimony and proof offered or read in the case, or on the trial of the several issues aforesaid.

Whereupon the counsel for the defendants moved and requested the Court to instruct the jury as follows, to wit:

"The record of the cause in which the bond sued on was "given, having been introduced and read in evidence in this "cause, shows that the plaintiff in that cause Charles B. Farwell, "did not recover judgment against James Buchanan, Henry "Eastman, and Patten McMillen, the defendants in said action, "therefore there has been no forfeiture, or breach of said writing "obligatory, or of the condition thereof, on the part of the "obligors therein named, and the Jury is instructed to bring in "a verdict accordingly."

And the Court then and there refused to instruct the jury according to the said request of the defendants' counsel, and then and there ruled and decided, that said instructions so as aforesaid asked for, were not legal or proper to be given to the jury, and excluded the same, to which said ruling and decision of said Court, the defendants, by their counsel, then and there excepted.

And the said Court did then and there charge and instruct the jury, as follows:

"The record of the attachment case shows that judgment was alone rendered against the administrator of Patten McMillen, deceased, who was one of the original defendants; and that the plaintiff had previously discontinued that suit as to the other original defendants, Buchanan aud Eastman, for want of jurisdiction of this Court as to them. This suit will lie, on this bond, to recover the amount of the debt, interest, and costs of the judgment rendered against the administrator of Patten McMillen, deceased, who was one of the defendants in the attachment suit."

And in substance, that the proofs showed a forfeiture and breach of the condition of the bond on the part of these defendants.

And the counsel for the defendants then and there excepted to all that part of the charge of said Court wherein the Court ruled and charged the jury as a matter of law, "that this suit will lie on this bond to recover the amount of the debt, interest, and costs of the judgment rendered against the administrator of Patten McMillen, deceased, who was one of the defendants in the attachment suit."

And the counsel also then and there excepted to that part and portion of the charge of said Court wherein the Court in substance charged the jury that the proofs showed a forfeiture and breach of the condition of the bond, on the part of these defendants.

And thereupon, the jury returned a verdict in favor of the plaintiff, and against the defendants.

And afterwards, at the same term of said Court, to wit, on the

15th day of May, 1860, the defendants filed a motion in arrest of judgment, for the alleged reason that it is apparent upon the pleadings and upon the whole record that the plaintiff is not entitled to recover judgment against the defendants.

Whereupon the Court aforesaid did afterwards, to wit, on the 22d day of May, 1860, at the same term of said Court decide upon and overrule said motion.

And because none of the said exceptions so offered and made to the said several rulings, opinions, and decisions of said District Court do appear upon the record of the said trial, therefore, at the request of the said defendants, by their counsel, the said Judge hath to this bill of exceptions put his seal at the said term of said Court, in open court, this 22d day of May, A. D. eighteen hundred and sixty.

A. G. MILLER, [SEAL.]

Bond Filed and Order for Supersedeas.

And afterwards, to wit, on the 25th day of May, A. D. 1860, came the defendants, John G. Inbusch and John D. Inbusch, and filed a bond in the penalty of eight thousand dollars, with Henry Corwith, Daniel Wells, Jr., and Charles K. Wells, as sureties, conditioned to prosecute a writ of error to effect, and to answer all damages and costs if they shall fail to make good their plea; and the said bond is approved by the Judge. And it is ordered that execution be superseded, and that a writ of error and citation be issued; and same day writ of error and citation issued, and copy of writ of error lodged for defendant in error. Which said bond is as follows:

Bond.

Know all men by these presents, that we, John G. Inbusch and John D. Inbusch, of the city and county of Milwaukee, as principal, and Daniel Wells, Jr., and Charles K. Wells of the same place, and Henry Corwith of Galena, Ills., as sureties, are held and firmly bound unto Charles B. Farwell in the full and just sum of eight thousand dollars, to be paid to the said Charles B. Farwell, his certain attorney, executors, administrators, or assigns, to which payment well and truly to be made we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals, and dated this 25th day of May, 1860.

Whereas, lately, at a term of the District Court of the United States for the District of Wisconsin, in a suit depending in said Court between Charles B. Farwell, plaintiff, and James Buchanan, John G. Inbusch and John D. Inbusch, defendants, judgment was rendered against the said John G. Inbusch and John D. Inbusch;

and the said John G. Inbusch and John D. Inbusch having obtained a writ of error to the Supreme Court of the United States, and filed a copy thereof in the Clerk's office of said Court, to reverse the judgment in the aforesaid suit, and a citation directed to the said Charles B. Farwell, citing and admonishing him to be and appear at a Supreme Court of the United States, to be holden at Washington, the first Monday of December next.

Now the condition of the above obligation is such, that if the said John G. Inbusch and John D. Inbusch shall prosecute their said writ of error to effect and answer all damages and costs, if they shall fail to make good their plea, then the above obligation to be void; otherwise the same shall be and remain in full force and virtue.

JOHN G. INBUSCH, [SEAL.]
JOHN D. INBUSCH, [SEAL.]
HENRY CORWITH, [SEAL.]
DANIEL WELLS, JR., [SEAL.]
CHARLES K. WELLS. [SEAL.]

Sealed and delivered in presence of
GEORGE W. LAKIN.

United States of America, }
District of Wisconsin. }

Henry Corwith and Daniel Wells, Jr., two of the sureties above named, each being severally sworn, does each for himself say, that he is worth the sum of eight thousand dollars, over and above all debts, legal liabilities, and property exempt from execution.

HENRY CORWITH,
DANIEL WELLS, JR.

Subscribed and sworn to this 25th day of May,
A. D. 1860, before me,
NATH. PERELES,
[SEAL.] *Notary Public, Milwaukee co., Wis.*

United States of America, }
District of Wisconsin. }

Charles K. Wells, one of the sureties to the above bond, being duly sworn, says, that he is worth the sum of five thousand dollars, over and above all debts, legal liabilities, and property exempt from execution.

CHARLES K. WELLS.

Subscribed and sworn to this 25th day of May,
A. D. 1860, before me,
NATH. PERELES,
[SEAL.] *Notary Public, Milwaukee co., Wis.*

And the said bond is endorsed as follows:

May 25, 1860. This bond and the sureties approved, and supersedeas allowed.

A. G. MILLER, *Dis. Judge.*

United States of America, } ss.
District of Wisconsin. }

I, John M. Miller, Clerk of the District Court of the United States of America, for the District of Wisconsin, do hereby certify that I have compared the writings annexed to this certificate, and they are true copies of their respective originals, now on file, and remaining of record in my office, being a full and complete exemplification of the record and proceedings in the suit of Chas. B. Farwell against James Buchanan, John G. Inbusch, and John D. Inbusch.

In testimony whereof I have hereunto set my hand and duly affixed the seal of the said Court, at the city of Mil-
[SEAL.] waukee, in the said District of Wisconsin, this sixth day of August, in the year of our Lord one thousand eight hundred and sixty, and of the independence of the said United States the eighty-fifth.

J. M. MILLER, *Clerk.*

United States of America, *ss.*

The President of the United States of America to the Judge of the District Court of the United States of America for the District of Wisconsin, greeting:

Because in the record and proceedings, as also in the
[SEAL.] rendition of a judgment in a plea which is in the said District Court of the United States of America, for the District of Wisconsin, before you, between Charles B. Farwell, plaintiff, and John G. Inbusch and John D. Inbusch, defendants, a manifest error hath happened, to the great damage of the said John G. Inbusch and John D. Inbusch, as by the complaint appears, and it being fit that the error, if any there hath been, should be duly coerected, and full and speedy justice done to the parties aforesaid in this behalf: you are hereby commanded, if judgment be therein given, that then under your seal, distinctly and openly you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, that

of right and according to law and custom of the United States should be done.

Witness the Honorable Roger B. Taney, Chief Justice of the said Supreme Court of the United States, this twenty-fifth day of May, in the year of our Lord one thousand eight hundred and sixty, and of the independence of the United States the eighty-fourth.

J. M. MILLER, *Clerk.*

United States of America to Charles B. Farwell, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington, for the first Monday of December next, pursuant to a writ of error filed in the Clerk's office of the District Court of the United States for the District of Wisconsin, wherein John G. Inbusch and John D. Inbusch are plaintiffs in error, and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Roger B. Taney, Chief Justice of the said Supreme Court of the United States, this twenty-fifth day of May, in the year of our Lord one thousand eight hundred and sixty, and of our independence the eighty-fourth.

A. G. MILLER,
District Judge of the U. S. for the Dist. of Wisconsin.

[Endorsed,]

We hereby accept service of within citation.

FINCHES, LYNDE & MILLER,
Att'ys for Charles B. Farwell.

May 28, 1860.

SUPREME COURT OF THE UNITED STATES.

No. 125.—December Term, 1861.

JOHN G. INBUSCH & AL., PLAINTIFFS IN ERROR,

vs.

CHAS. G. FARWELL.

Brief of Reverdy Johnson *for Plaintiffs in Error.*

The only question in this case is, as to the construction and effect of the bond in which the suit was brought, dated the 27th February, 1858. The bond is on page 4 of transcript.

That question is, whether a judgment against *one* of the parties named in the condition of the bond—the only judgment which was rendered in the action referred to in said condition—is covered by the bond.

It will be contended, in behalf of the plaintiffs in error, that it does not. That the true meaning of the condition is, that it embraces a joint and not a separate judgment. That such a bond is to be construed strictly, needs no authority to show. It is a familiar rule of legal interpretation.

If this be the effect of the bond, the judgment below is erroneous.

REVERDY JOHNSON,
For Plaintiffs in Error.

Burgh 43

6 Burg 244

Chitty 84 393

5 B & B 321

21 [illegible] 242

23 [illegible] 303

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Janson